IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 89 of 2007()

CC.910/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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PETITIONER: ACCUSED

ABDUL KAREEM P.V., S/O. M.P.MUHAMMED,
CHENGALAI, THERLAYI, TALIPARAMBA TALUK,
KANNUR DISTRICT.

BY ADV. SRI.PROMY KAPRAKKATT

RESPONDENTS: STATE / DE FACTO COMPLAINANT

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1. THE STATE OF KERALA, REP. BY
THE SUB INSPECTOR OF POLICE,
(THROUGH THE PUBLIC PROSECUTOR OF THE
HIGH COURT OF KERALA, ERNAKULAM.

2. ABDUL RAHIMAN,
THIYANTE VALAPPIL HOUSE, S/O. ALI,
THERLAYI, THALIPARAMBA TALUK,
KANNUR DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.89 of 2007

Dated this the 19th day of February, 2007

ORDER

The petitioner is the 3rd accused in a prosecution, inter alia, under Section 323 and 341 read with 149 I.P.C. Altogether there were 5 accused persons, it is submitted. Investigation was completed and the final report was filed and the case was registered as C.C.190 of 1988. Accused 3 and 4 were absconding and the case against accused 1, 2 , 5 & 6 proceeded as C.C.361 of 1990 and they were found not guilty and acquitted. The case against accused 3 & 4 was split up and refiled as C.C.910 of 1993. The case was transferred to the list of Long Pending Cases and the same is pending as L.P.C.116 of 1994. The case against the 4th accused was split up and the case against him has since been quashed by this Court as per order in Crl.M.C.989 of 2003.

2. The case against the petitioner is pending as L.P.C.116 of 1994. That case was originally numbered as C.C.910 of 1993 after it was split up. The case records in C.C.910 of 1993 ie. L.P.C.116 of 1994 are available with the learned Judicial Magistrate of the First Class-I, Kannur, it is reported. According to the petitioner the matter has been settled between the parties and the petitioner along with the defacto complainant shall appear before the learned Magistrate and

file application for composition. Composition of the compoundable offences can be accepted. The learned Magistrate may certainly consider whether there is any worthwhile allegation of the petitioner having committed any non compoundable offence. Only if there is such material, need the proceedings be continued against the petitioner. The petitioner can appear before the learned Magistrate and claim dropping of proceedings under Section 258 Cr.P.C in the light of the composition. The acquittal of the co-accused cannot by itself justify the prayer for quashing of proceedings invoking the powers under Section 482 Cr.P.C. This is clear from the decision of the Full Bench of this Court in Moosa v. Sub Inspector of Police [2006 (1) KLT 552].

3. This Crl.M.C is, in these circumstances, dismissed with the above observations. Counsel for the petitioner submits that a warrant of arrest is pending against the petitioner. The petitioner can certainly appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not appear earlier. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No specific or special directions appear to be necessary. Sufficient general directions have already been issued in **Alice**

George v. The Deputy Superintendent of Police [2003(1) KLT 339]. It is in thee circumstances further observed that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the learned Public Prosecutor in charge of the case the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-